

76666.0114

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MURRAY MCDONALD

§

Plaintiff,

§

v.

Civil Action No. 1:16-cv-258

**TRAVELERS LLOYDS OF TEXAS
INSURANCE COMPANY**

§

Defendants

§

**DEFENDANT TRAVELERS LLOYDS OF TEXAS INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant TRAVELERS LLOYDS OF TEXAS INSURANCE COMPANY, ("Travelers" or "Defendant"), files its Notice of Removal of this action from the County Court At Law Number 4, Williamson County, Texas to the United States District Court for the Western District of Texas, Austin Division, the Court for the District and Division encompassing the place where the lawsuit is currently pending. In support of this removal, Defendant relies upon the Appendix Filed in Support of Defendant's Notice of Removal filed contemporaneously herewith and shows the following:

**I.
INTRODUCTION**

1. On January 27, 2016, Plaintiff Murray McDonald filed his original petition in the County Court At Law Number 4, Williamson County, Texas captioned *Murray McDonald v. Travelers Lloyds of Texas Insurance Company*, Cause Number 16-0152-CC4 (the "State Court Action").
2. Citation for the State Court Action was issued on January 28, 2016 and served on the Defendant on February 2, 2016.

76666.0114

II.
BASIS FOR REMOVAL

3. This Court has original jurisdiction over this State Court Action, pursuant to 28 U.S.C. §1332(a), because it is a civil action between citizens of different states where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

4. The Plaintiff seeks damages to repair storm related damage, consequential damages for breach of contract, mental anguish damages, 18% per annum penalty under Section 542 of the Texas Insurance Code, attorneys' fees, damages authorized by Section 17.50(b)(1) of the Texas Deceptive Trade Practices Act, and exemplary damages. *See Exhibit A-3.* Accordingly, the amount in controversy in this matter meets and exceeds the federal jurisdictional minimum of \$75,000, exclusive of interest and costs

5. Plaintiff was at the time of the filing of this action, has been at all times since, and still is an individual resident citizen of Texas. For diversity purposes, an individual is a citizen of the state of her domicile, which is the place of her true, fixed, and permanent home and principal establishment, to which she has the intention of returning home whenever she is absent therefrom. *See Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). Accordingly, Plaintiff is a citizen of Texas.

6. Defendant Travelers Lloyds of Texas Insurance Company is a Lloyd's plan insurance association and is an unincorporated association. For purposes of diversity jurisdiction, the citizenship of a Lloyd's plan insurance association is determined by the citizenship of its underwriters. *Royal Ins. Co. of Am. v Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993); *see also State Farm Lloyds v. Peed*, No. CIV.A. 3:00CV1696-BC, 2001 WL 513427 (N.D. Tex. May 9, 2001)(“ For purposes of diversity jurisdiction, a Lloyds Plan insurer is considered an ‘unincorporated association’ whose citizenship is determined solely by the citizenship of its underwriters.).

76666.0114

7. On the date of this removal and at all relevant times, Travelers Lloyds of Texas Insurance Company's underwriters are all citizens of Connecticut; none of its underwriters are citizens of Texas. *See Exhibit B.* Accordingly, Travelers Lloyds of Texas Insurance Company is a citizen of Connecticut.

8. Because the amount in controversy exceeds \$75,000 and Plaintiffs are citizens of Texas while no properly joined defendant is a citizen of Texas, this Court has original jurisdiction over the present action pursuant to 28 USC §1332. Therefore, removal is proper.

9. This action may be removed to this Court pursuant to 28 USC §1441(a), which allows for the removal of any civil action brought in the state court of which the District Courts of the United States have original jurisdiction, by the defendant or the defendants, to the District Court of the United States for the district and division embracing the place where such action is pending.

10. This Notice of Removal is filed within thirty (30) days after service (on February 2, 2016) by Defendants of the State Court Action. This Notice of Removal is also been filed within one year of the filing of Plaintiffs' Original Petition by which the State Court Action was commenced. This Notice, therefore, if timely filed pursuant to 28 USC §1446 (b).

III. PROCEDURAL REQUIREMENTS

11. In accordance with 28 USC section 1446 (D), Defendants will promptly give written notice of this Notice of Removal to Plaintiffs through counsel of record and file a copy of this Notice of Removal in the County Court at Law Number 3, Bexar County, Texas.

12. Defendants reserve the right to amend or supplement this Notice of Removal.

13. The following are included in the Appendix filed contemporaneously with this Notice of Removal:

76666.0114

- (a) an index of all documents that clearly identifies each document and indicates the date the document was filed in the State Court Action;
- (b) a copy of each document filed in the State Court Action, except discovery material, arranged in chronological order according to the state court filing date;
- (c) a separately filed JS 44 Civil Cover Sheet; and
- (d) a separately filed Supplement to JS 44 Civil Cover Sheet for Cases Removed from State District Court.

For the above reasons, Defendants give notice of the removal of the State Court Action to this Court and respectfully request that this action proceed before this Court as though it had originally been instituted in this Court.

Dated: ____ February, 2016

Respectfully submitted,

ADAMI, SHUFFIELD, SCHEIHING
& BURNS, P.C.
9311 San Pedro, Suite 900
San Antonio, Texas 78216
Telephone (210) 344-0500
Telecopier (210) 344-7228
bscheihing@adamilaw.com

By: 
ROBERT F. SCHEIHING
State Bar No. 17736350

ATTORNEY FOR DEFENDANTS

76666.0114

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to the following counsel of record in compliance with the Texas Rules of Civil Procedure this 29 day of February, 2016:

Eric B. Dick
DICK LAW FIRM, PLLC
3701 Brookwoods Drive
Houston, Texas 77092
ebdick@gmail.com


ROBERT F. SCHEIHING